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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,404	02/26/2002	Mark W. Kroll	SJ1-029US	6240
36802	7590	12/07/2004	EXAMINER	
PACESETTER, INC. 15900 VALLEY VIEW COURT SYLMAR, CA 91392-9221			OROPEZA, FRANCES P	
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 12/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/087,404

Applicant(s)

KROLL, MARK W.

Examiner

Frances P. Oropeza

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 10-12, 21-32, 42-44, 47 and 48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 13-20, 33-41, 45 and 46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/2/02</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/ Restriction

1. Claims 10-12, 21-32, 42-44, 47 and 48 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/6/04.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-9, 13-19, 33-41, 45 and 46 are rejected under 35 U.S.C. 102(e) as being anticipated by Schauerte et al. (US 6690971). Schauerte et al. disclose a method for increasing cardiac output by stimulating the sympathetic nerves, the location of stimulation ranging from the sympathetic nerve ganglion to the cardiac muscle, the stimulation pulse varied based on detected pressure readings so appropriate therapy is provided, and the therapy provided in the refractory period of the heart (col. 1 @ 4-7 and 48-60; col. 2 @ 2-15; col. 2 @ 63 – col. 3 @ 27; col. 3 @ 41-46 and 50-53; col. 3 @ 61 – col. 4 @ 5; col. 4 @ 32-52; col. 4 @ 66 – col. 5 @ 6; col. 5 @ 61 – 64; col. 6 @ 19-29; col. 7 @ 55 – col. 8 @ 2; col. 8 @ 22-60).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schauerte et al. (US 6690971) in view of Ekwall (US 6314323). As discussed in paragraph 2 of this action, Schauerte et al. disclose the claimed invention except for an integrator to integrate the pressure signal.

Ekwall teaches cardiac output determination using an integrator with a pressure sensor for the purpose of forming a control signal. It would have been obvious to one having ordinary skill in the art at the time of the invention to have used an integrator with the pressure sensor in the Schauerte et al. system in order to provide a simple and reliable way to adjust algorithms and one or more stimulation parameters dynamically in response to environmental and demand change to maintain an optimum cardiac output (abstract; col. 2 @ 46-51).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frances P. Oropeza whose telephone number is (571) 272-4953. The examiner can normally be reached Monday through Friday from 9 AM to 5:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes, can be reached on (571) 272-4955.

The telephone number for facsimiles for regular communication and After Final communications is (703) 872-9306.

Frances P. Oropeza
Patent Examiner
Art Unit 3762

FPO
11/24/04

Angela D. Sykes

ANGELA D. SYKES
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